Our “Tax Take” on Canada’s COVID-19 Economic Response Plan

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Today, the federal government announced Canada’s COVID-19 Economic Response Plan (the “**Plan**”), an $82 billion support plan for individuals and businesses in response to the COVID-19 crisis. Although specific details are sparse on the implementation of the Plan, it appears to include the previously announced $10 billion business stimulus package (“version March 13, 2020”) and a portion of the $1 billion support package (“version March 11, 2020”).

Support for Individuals

Filing due dates

The CRA has extended the due date for 2019 individual tax returns to June 1, 2020. Trusts with a December 31, 2019, taxation year-end will now have a return filing due date of May 1, 2020, rather than March 30, 2020. No filing extension has been provided to self-employed individuals, who will continue to have a June 15, 2020, due date. Also, trusts without a calendar year-end, such as some estates (for example, “graduated rate estates”) are not granted any extensions.

Even though individual tax return due dates have been extended, the government recommends to not delay filing in order to avoid delays obtaining benefits such as GST credits or the Canada Child Benefit.

Extension of the trust T3 filing due dates may limit certain individuals’ and corporations’ ability to file their tax returns before June 1, 2020, if these taxpayers are waiting for T3 slips to be received. This may delay refunds and appropriate determination of entitlements for some (especially for income-sensitive benefits).

Deferral of Tax Owed

Remarkably, the government is allowing all taxpayers to defer payment of Part I tax or instalments until September 1, 2020; and with no interest or penalties accumulating until September 1, 2020.

This deferral will not assist most employees because their tax owed will already have been withheld and remitted to the CRA by their employer. High-income individuals, including those who receive large amounts of dividends or capital gains, which are not subject to withholding, will benefit with a five-month deferral of tax and instalments.

EI Sickness Benefit Waiting Periods

Since March 15, 2020 – as announced in version March 11, 2020 – the federal government has waived the one-week waiting period for Employment Insurance ("**EI**") sickness benefits caused by quarantine. Currently, it is unclear if this one-week waiver applies to the regular EI benefits for workers who have lost their jobs.

Emergency Care Benefit for Workers and Parents

The federal government is introducing an Emergency Care Benefit program, which will provide up to $900 bi-weekly for up to 15 weeks for workers who do not qualify for EI. Qualification includes workers on quarantine, taking care of a family member infected with COVID-19, or parents unable to work because of childcare obligations.

The government refers to this as a flat-payment, although it is unclear if the benefit will be reduced based on income levels.

The government expects this Emergency Care Benefit to be a $10 billion expenditure.

We are not sure how the CRA will screen and approve applicants or how the CRA has additional capacity to handle the administration of new programs. We understand that many CRA employees have been sent home amidst the crisis. Time will tell.

Long-Term EI Support for Workers Ineligible for EI

The federal government has promised up to $5 billion in support for workers who are not eligible for EI and who are facing unemployment through a new Emergency Support Benefit program. No other details have been provided.

Workers who agree to reduce their working hours due to the crisis can receive EI benefits through the EI Work Sharing Program. Eligibility for this program will be extended for agreements up to 76 weeks, and other eligibility requirements will be eased.

Increased GST Credit

The federal government is offering a one-time additional GST credit payment by early May 2020, which it estimates will provide an additional $400 for a single person and $600 for couples that qualify.

Eligibility for the GST credit is determined during the processing of personal tax returns. GST credits for the 2018 taxation year will have been fully paid by the end of April 2020. The next payment after May is scheduled for July 2020, which is the first installment that will be based on 2019 taxation year eligibility. It is unclear if this additional May 2020 payment for the increased GST credit will be based on 2018 or 2019 taxation year eligibility. A personal tax return for the relevant taxation year must be filed in order to be eligible to receive the credit. As discussed above, the federal government has extended the filing deadlines for individuals because of difficulties getting assistance in getting returns properly prepared. We expect that many individuals will delay filing their personal tax returns this year. Given that GST works on a twelve month cycle, we expect the May payment to be covered by the 2018 income tax return. However, as this is unclear, we recommend that individuals that are eligible for the GST credit, do not delay filing their 2019 personal tax return in order to avoid delays in receiving the correct GST credits.

It would have been helpful if the government paid the increased GST credit with the regularly scheduled

April 3rd installment, to avoid confusion with eligibility.

The government expects the increased GST credit to cost $5.5 billion.

Practically, this measure will assist lower-income individuals and households. However, the additional funds will not be available for at least another 45 days from today, and may require 2019 personal returns to be filed before the extended filing deadline. This may not provide the immediate relief necessary to many persons and the overall economy.

Increased Canada Child Benefit

The Canada Child benefit will be increased with a one-time additional payment of $300 per child, paid in May 2020. It is unclear if additional low-income eligibility requirements will be included. Similar to the GST credit, the government is encouraging 2019 tax returns to be filed without delay – before the extended June 1, 2020 filing deadline – in order to not interrupt Canada Child Benefit payments.

The government expects the increased Canada Child Benefit to cost $1.9 billion.

RRIF withdrawals

Minimum withdrawals from Registered Retirement Income Funds will be reduced by 25% for 2020.

The government expects this minimum withdrawal deferral to cost $495 million.

Overall, we commend this initiative that will enable seniors to avoid unnecessary liquidation and withdrawals while stock market conditions are unfavourable and also allows deferral of tax on funds not needed to meet living expenses.

Other supports

Canada's six largest banks have offered up to a 6-month payment deferral for mortgages, determined on a case-by-case basis. It is unclear what eligibility and documentation requirements the banks will impose, or how the banks intend to administer deferral requests with branches closed.

Also, additional funding by the government to indigenous communities, homeless accommodation, student loan interest relief and women and children fleeing violence has been provided.

Business Tax Measures

The Government announced several initiatives aimed towards businesses facing financial hardship.

Filing Due Dates

Paragraph 150(1)(a) of the Income Tax Act (the "**Act**") provides that the filing deadline for a corporation is six months after the end of its taxation year. Despite the government providing extensions for filing for individuals and trusts, no such extensions have been provided for corporations. As a result, for corporations with a calendar year-end, they will still have a tax return filing deadline of June 30, 2020. Corporations with September, October, and November 2019 year-ends will still have to file their corporate tax return by March, April, and May 2020, respectively.

The Plan did not mention nor provide any partnership filing due-date extensions. Hopefully, this will change.

However, the government also provided that businesses will be permitted to defer, "until after August 31, 2020, the payment of any income tax amounts that become owing on or after today and before September 2020." Although it appears the intention is to capture tax balances due for the 2019 taxation year, the wording used by the government provides uncertainty as to whether these balances became owing on or after today, as a corporation with a calendar year-end would seem to not include many corporations' balances at year-end.

The deferral will not apply to any tax withholdings such as payroll or Part XIII withholdings, and there are no extensions for filing or remitting GST or HST. For example, a monthly GST / HST filer will still be required to file by the end of each month, including this month. Also, Part IV tax will still be required to be paid by the regular balance due-date (March 31 for Canadian-controlled private corporations ("CCPCs") with a calendar year-end). This poses practical difficulties because corporations will have to compute Part IV and potentially other non-Part I taxes owed and remit such taxes at different time periods.

The deferral benefit should primarily apply to CCPCs with taxation year-ends on or after December 18, 2019 (three months prior to today), because the balance due-date for other corporations with a calendar year-end has already passed. Additionally, only those CCPCs that have tax owing in excess of their instalment base should benefit from the deferral of the balance owing. On the other hand, if a corporation has accelerated its tax balance owing payment in excess of minimum instalment requirements, it should theoretically be able to request a refund from CRA without being subject to interest. Practically, given the current strain on CRA resources, it is likely that the refund will not be processed prior to September 1, 2020.

We expect provinces to follow federal's lead on this. Alberta has announced similar extension on corporate income tax balances and instalment payments to September 1, 2020.

CRA Audits and Objections

The CRA did not extend a taxpayer's objection period past the normal period – 90 days from the date of the Notice of Assessment. Although it seems that the CRA is effectively on hold, taxpayers should take caution and still pay attention to the normal deadline requirements.

With respect to CRA audits, the government stated that the CRA will not contact any "small or medium businesses" to initiate any post-assessment GST/HST or Income Tax Audits for the next four weeks. It also stated that "for the vast majority of businesses," the CRA will temporarily suspend audit interaction with taxpayers and representatives.

It is important to note that subsection 152(1) of the Act imposes an obligation upon the CRA to "with all due dispatch," examine a return and to assess the tax for the taxation year (and interest and penalties), if any, that are payable. Typically, this results in the CRA issuing a quick assessment, and subsequently following up post-assessment to investigate further matters.

Subsection 152(3.1) of the Act provides that the "normal reassessment period" for a taxpayer is:

- If the corporation is a CCPC, an individual, or a trust (that is not a Mutual Fund Trust) within three years of the date the original notice of assessment was sent or the sent date of the original notification that no tax is payable (whichever is earlier); and

- If the corporation is not a CCPC at the end of the year, four years from the date the original notice of assessment was sent or the sent date of the original notification that no tax is payable (whichever is earlier).

There are only a few situations in which the "normal reassessment period" may be extended to an unlimited reassessment period, thereby allowing the CRA to reassess after three or four years. Paragraph 152(4.01)(a) of the Act provides that an assessment to which paragraph 152(4)(a) applies may be made after the normal reassessment period only to the extent that it can reasonably be regarded as relating to:

a. any misrepresentation made by the taxpayer that is attributable to neglect, carelessness, or wilful default;
b. any fraud committed in the filing of the return or supplying the required information; and
c. a matter specified in a waiver filed with the CRA within the normal reassessment period in respect of the year.

There are also provisions that allow for an "extended reassessment period," which only apply in narrow circumstances, and a few other provisions which allow for extra years in certain circumstances.

What the government failed to mention is what will happen in the situation where the normal reassessment period is about to expire. If a taxpayer is currently under audit with respect to a taxation year that is close to being statute-barred (which is common because the CRA often waits until close to the statute-barred date to initiate an audit), it is uncertain what the CRA will do with an audit that is about to reach the statute-barred time limit in the midst of this shutdown period. Accordingly:

- Will waivers be sought?
- Will the CRA rely on extending the reassessment period due to alleged misrepresentations?
- Will there be further legislation be proposed to provide an alternative way to extend the normal reassessment period?
- Will CRA be actively trying to finalize these audits and issue assessments before the expiration of the normal reassessment period?

We strongly recommend seeking legal advice before agreeing to any proposed waiver from the CRA or if the CRA does not respect the three or four year limitation period.

Wage Subsidy

A major initiative announced by the government aimed at businesses is to provide "eligible small employers" (this is not yet defined) a temporary wage subsidy for a period of three months. The subsidy is equal to 10% of the remuneration paid during the three month period, to a maximum of $1,375 per employee (equivalent to $55,000 of annual salary with $13,750 gross salary paid over these three months) and $25,000 per employer. The government further noted that businesses can benefit immediately by reducing their remittances of income tax withheld on their employees' remuneration.

Looking at this proposal a little more closely, in order to receive the $1,375 benefit from the government, employers would need to expend approximately $1,000 to the government in CPP and EI.[1] Accordingly, this net saving is likely not sufficient to impact decision making when an employer is making the hard decision whether to lay-off employees.

This "benefit" is available immediately and supporting legislation is to follow the release of the Plan. We look forward to receiving further details and clarification on these measures from the government, as it appears that this initiative may not provide the necessary help for employers during economic hardship to prevent lay-offs.

Takeaways

More than half of the Plan provides short-term delays of tax collection rather than economic stimulus. Many businesses have paid tax by instalments throughout 2019, and therefore the benefits of deferral will be less wide-spread.

Little incentives have been provided to keep businesses operational and to refrain from terminating employees. There have been numerous media reports of businesses laying off many of their employees due to economic conditions. These measures will likely not encourage businesses to retain their staff, and instead, by expanding the EI safety net, may lead to more lay-offs and delayed re-hiring.

Our firm looks forward to analyzing further details. Despite some of our concerns, we recognize the tremendous pressure that the government has faced in recent days and commend them for its efforts in trying to deal with the economic hardships faced by Canadians. We also look forward to analyzing the detailed legislation and hope that it addresses some of the uncertainties discussed above. Canadian businesses that face tremendous uncertainties will appreciate more targeted responses soon.

Join us on Thursday, March 19 at 3:00 p.m. MT for a Facebook Live session – we'll discuss the plan in more detail and answer any of your questions regarding the tax implications of Canada's latest announcement.

[1] Thanks to Cory Litzenberger of CGL Strategic Business & Tax Advisors in Red Deer, AB for pointing this out on his LinkedIn account as follows:

In order to get $1,375 of relief, this means businesses would need to pay $13,750 in wages. If a business pays $13,750 in gross wages, that also means they will have already paid the employer portion of CPP and EI totalling $1,026.03. Accordingly, the real benefit is approximately $350 per employee on $13,750 of wages.